

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

G-TEC TRUCK EQUIPMENT COMPANY¹

Employer

and

LEO BROEKHUIZEN, an Individual

CASE 7-RD-3205

Petitioner

and

MECHANICS MOTOR CITY LODGE NO. 698,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO²

Union

APPEARANCES:

Kristoffer Granning, of Dearborn, Michigan, for the Employer.

Leo Broekhuizen, of Highland Township, for the Petitioner.

William Rudis, of Cincinnati, Ohio, for the Union.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Union appears as amended at the hearing.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks a decertification election among the Employer's service and maintenance employees⁴ at its 3040 Wyoming, Dearborn, Michigan facility; but excluding all salaried employees, office clerical employees, guards and supervisors as defined in the Act.⁵ The bargaining unit consists of approximately five service and maintenance employees, including David Biller, journeyman welder; Jeremy Hay, journeyman welder; Nelson Bentley, mechanic fabricator; Kevin Bruce, mechanic fabricator; and the Petitioner, leadman/ journeyman welder. The only issue in dispute is the supervisory status of the Petitioner. The Union contends that the Petitioner is a supervisor within the meaning of Section 2(11) of the Act, and that the petition should therefore be dismissed. The Petitioner and the Employer contend that the petition was properly filed by the Petitioner as a bargaining unit employee who is not a statutory supervisor.

Since about 1956, the Employer has recognized the Union as the bargaining representative of its service and maintenance employees and has negotiated successive collective bargaining agreements with the Union, the most recent being effective November 1, 1996 to November 1, 1999. During the years, the parties have negotiated contract language regarding the position and responsibilities of leadman. Since about 1980, the contract language regarding the position and responsibilities of leadman has read as follows:

³ The Employer and Union filed briefs in this matter, which have been carefully considered.

⁴ The service and maintenance employees include the following job classifications: journeyman welders, mechanic fabricator, helper and leadman.

⁵ The parties stipulated regarding the appropriateness of the unit.

“a leadman shall be defined as an employee, who performs work but who directs the activities of other employees, and/or who is charged with the responsibility of making decisions as to what repairs are necessary, but must be a member of the bargaining unit.”

The Employer is engaged in the distribution of truck and trailer equipment in the metropolitan Detroit area. The Employer’s sole facility is located in Dearborn, Michigan. The bargaining unit welder fabricator employees perform primarily sheet metal and metal fabricating work on trucks and trailers. In the performance of these job duties, the welder fabricators possess their own tools and tool boxes and the Employer provides heavy tooling equipment such as drill presses, grinders and frame drills.

The Employer’s operations are headed by President and General Manager Kristoffer Granning.⁶ Reporting directly to Granning are Roy Brown, parts department manager; Irma Seitz, office manager; Marty Coyne, sales coordinator; Jeff Savelli, outside sales representative; Michael Harrison, outside sales representative; Doug Dunning, inside sales representative; and the Petitioner, as leadman.⁷ The record demonstrates that all of the above employees except for the Petitioner are salaried employees.

Prior to the Petitioner becoming a lead employee, the Employer employed a foreman who was in charge of overseeing the shop employees. The foreman position was not included in the unit description contained in the parties’ collective bargaining agreement. The foreman retired about 1996 and was not replaced. Rather, following the foreman’s retirement, the Petitioner was promoted to and assumed the duties of leadman. At the time of his promotion to leadman, the Petitioner received an hourly wage increase. The record indicates that the Petitioner currently earns \$13.75 per hour, a few cents more than the other unit employees.

The unit employees perform work in the Employer’s shop area. The Petitioner has the most shop experience and seniority, about 16 years, while the rest of the bargaining unit employees have five years seniority or less. The Petitioner shares an office with Sales Coordinator Marty Coyne which is located in the middle of the shop. There is a common desk and phone in this office. No employee records are kept in this office. The Petitioner uses the telephone regularly to answer any technical questions from customers, vendors and dealers and to address specific repair problems. General Manager Granning’s office is located in the front office area of the facility approximately 50 feet from the shop area.

⁶ Granning is also a part owner of the Employer along with his father, Ronald Granning and his brother, David Granning. The parties stipulated that Kristoffer Granning is a supervisor and manager within the meaning of Section 2(11) of the Act.

⁷ The parties stipulated that Brown and Seitz are supervisors within the meaning of Section 2(11) of the Act.

Granning does not have any visibility from his office into the shop area. However, Granning routinely tours the shop area on a daily basis to oversee mechanical work and to talk with unit employees and customers.

The hours of work for all bargaining unit employees are 8:00 a.m. to 4:30 p.m. However, the Petitioner regularly reports to work at 7:45 a.m. to open the building.⁸ The Petitioner also regularly stays later than 4:30 p.m. in order to close the building if any of the other unit employees are working overtime hours. The record indicates that the Petitioner is not paid for the 15 minutes of time in the morning hours during which he reports to work before the start of the official shift. All unit employees, including the Petitioner, punch a time clock and receive an unpaid lunch period from 11:55 a.m. to 12:30 p.m. and one, 15-minute paid break per day. The record indicates that the Petitioner has requested unit employees to work through their break time and take it later based on production considerations. The Petitioner uses a company pick-up truck to commute to and from work each day. This vehicle is used as a parts delivery truck during work hours. The Employer pays for gasoline and maintenance associated with the use of this vehicle. The other bargaining unit employees do not have similar use of any company vehicles. All unit employees, including the Petitioner, are subject to the same benefits as provided in the parties' collective bargaining agreement, and all unit employees wear the same Employer-provided uniforms.

At the commencement of each workday, the Petitioner obtains and reviews work requisition orders from Granning's office. The Petitioner determines from this job list who is the most qualified unit employee to perform the designated job in a timely and correct manner, and then places the assigned work order in the unit employee's slot. While the Petitioner's job assignments are always subject to approval by Granning, the record indicates that Granning rarely changes any jobs assigned by the Petitioner to unit employees. The Petitioner also receives a periodic list from Granning's office each week listing any incoming jobs and pending jobs that need to be completed.

The unit employees perform the work noted on their designated work orders, turn their work orders over to the Petitioner when each job is completed, and then seek a new assignment from the Petitioner. At the end of each workday, the Petitioner adds up the time spent on all the employees' work orders and turns the work orders into the front office. The Petitioner also reviews employee time cards for any inaccuracies and turns them into the front office. If an employee forgets to punch the time clock, the Petitioner refers them directly to Granning.

⁸ The Petitioner, as well as President Granning and Parts Department Manager Brown, possess keys to the building.

As a lead employee, the Petitioner is also responsible for dealing directly with customers in addressing specific repair issues. When a customer comes into the shop requesting a repair, the Petitioner records the repair information and forwards it to Granning for generation of a repair order and placement on the repair schedule. The Petitioner regularly performs mechanical work throughout the course of each working day, although it is unclear from the record as to the specific amount of time he spends performing mechanical work in comparison to performing his lead duties. Based on his greater experience, the Petitioner is responsible for training new employees and assisting employees in the performance of their jobs. The Petitioner is also responsible for making a periodic list of necessary supplies which he turns into the front office for approval and processing. The record indicates that the other shop employees may also request necessary supplies directly from the parts department. The Petitioner signs for shipments of freight and is responsible with Granning for hazardous material control. The Employer does not have any evaluation or performance appraisal system.

When Granning is absent from the facility, the Petitioner is in charge of the shop employees. However, Granning is always available by telephone via his pager and the record indicates that when Granning has been absent from the facility, the Petitioner has paged him on a daily basis regarding mechanical and scheduling issues. When the Petitioner is absent from the facility, Granning fills in for him with respect to his lead duties only, i.e., scheduling and assignment of employees.

The Petitioner does not possess any authority to hire, fire, suspend, promote, lay off or recall employees. Additionally, the Petitioner does not possess independent authority to approve employee requests for time off, including leaving early, coming in late or vacation time. The Petitioner has taken employee absenteeism calls and reports any absentee information to Granning. The Petitioner does not possess authority to approve overtime. The Petitioner is expected to notify Granning of anything significant that occurs on his shift of both a service/maintenance and personnel nature.

Regarding disciplinary action by the Employer, the record indicates that as leadman the Petitioner reports any employee infractions of the collective bargaining agreement rules and regulations or any other disciplinary infractions directly to Granning, who then decides what, if any, discipline will issue. There is no record evidence that the Petitioner makes recommendations to Granning regarding the discipline of shop employees. Although the Union contends that the Petitioner has the authority to issue reprimands on his own and introduced evidence at the hearing regarding three disciplinary write-ups recently signed by the Petitioner, the record demonstrates that these reprimands were issued by the Petitioner in the absence of and at the specific direction of Granning.

During 1998 to 1999, for about a year and a half, the Petitioner served as shop steward and was recently removed from this position by the Union upon learning of his

alleged supervisory status. The Employer has always deducted union dues from the Petitioner's paycheck.⁹

In order to find an individual to be a supervisor, the individual must not only possess one of the supervisory indicia set forth in Section 2(11) of the Act, but such authority must also entail the exercise of independent judgment. In enacting Section 2(11) of the Act, Congress stressed that only persons vested with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, lead men,...and other minor supervisory employees". *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985).

The Union contends that at some time unbeknownst to it, the Employer bestowed additional responsibilities of a supervisory nature on the Petitioner as leadman, i.e, the authority to effectively recommend assignments of work and the authority to discipline employees, that are clearly within the parameters of Section 2(11). With respect to the Petitioner's assignment and direction of work, if the assignment or direction of other employees is merely routine, clerical or perfunctory in nature, it is not sufficient to confer supervisory status. *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986).

The Petitioner, as leadman, acts mainly as a conduit between management and the unit employees. He is primarily responsible for assuring that the work of the shop is completed properly and on schedule. However, such responsibility is not, of itself, sufficient to confer supervisory status. *Hydro Conduit Corp.*, 254 NLRB 433, 438 (1981). The Petitioner engages in routine direction which requires no independent judgment. The maintenance schedules provided by management determine when and which vehicles are to be repaired. The general job tasks required for vehicle repair and maintenance are constant. While the record is silent as to the degree of skill needed to perform the jobs, the shop employees are rotated among them such that it appears they are all capable of performing various tasks. The Petitioner's assignment of tasks to the shop employees exhibits no more than the knowledge of an individual with greater experience regarding which employees can

⁹ At the hearing, the Union made a motion that the instant decertification petition be held in abeyance pending investigation and determination of the unfair labor practice charge filed by the Union in Case 7-CA-42378. The unfair labor practice charge, filed by the Union after the filing of the instant petition, alleges that the Employer by its agents, including the Petitioner, violated Sections 8(a)(1), (2), (3) and (5) by unlawfully soliciting bargaining unit employees to sign a decertification petition. Thus, the unfair labor practice charge addresses the supervisory status of the Petitioner. A decision was made to go forward with the instant petition as the supervisory issue which is the subject of the petition is identical to the supervisory issue which is the subject of the unfair labor practice charge. Section 11730.6 of the Board Casehandling Manual – Representation Proceedings states as follows: "Notwithstanding the absence of a request to proceed..., the Regional Director may be of the view that the R case should proceed where (a) the unfair labor practices are so related, at least in part, to the unresolved issues sought to be raised by the petition that the processing of the R case will resolve significant common issues (e.g., *Panda Terminals*, 161 NLRB 1215, 1223-1223 (1966); *Krist Gradis*, 121 NLRB 601, 615-616 (1958))...." In its brief, the Union again argues that the instant petition should be held in abeyance. For the reasons stated above, the motion is denied.

most competently and efficiently perform particular jobs. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992).

As to whether the Petitioner possesses the authority to independently discipline employees, or to effectively recommend such action, I find that he does not possess such independent authority, but rather performs only a reporting function for Granning, who decides what, if any, disciplinary action should be taken. The Petitioner's involvement in such matters is more akin to an administrative function of documenting employee performance without having any real impact on the eventual action to be taken with regard to employee terms and conditions of employment. *Passavant Health Center*, 284 NLRB 887, 889 (1987). The Petitioner merely reports infractions or incidents, and Granning determines whether discipline will issue and to what degree. The Union's contention that the Petitioner possesses the authority to issue disciplinary reprimands is not established by the weight of the evidence. Even assuming such authority exists, the Petitioner has never independently exercised such authority, nor is there any evidence that such reprimands, even if given, would have an adverse effect on an employees' job status or tenure. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1195 (1994).

The Union also relies on several secondary indicia of supervisory status. However, the existence of secondary indicia of supervisory status such as the possession of keys, title, higher pay, and the like are, standing alone, insufficient to demonstrate supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). That Petitioner trains new employees does not confer supervisory status since training does not involve the exercise of independent judgment, but is merely the authority of more skilled and experienced employees over unskilled and inexperienced employees. *First Western Building Services, Inc.*, 309 NLRB 591, 601 (1992). The coordination of breaks and lunch does not require any independent judgment because they are determined by the production flow and the employees generally use their own initiative to avoid any disruption. The periodic absences of Granning from the facility which leaves the Petitioner in charge of the shop employees also does not require a finding of supervisory status of the Petitioner when Granning is available at all hours by pager to give direction and make decisions. *First Western*, supra at 603.¹⁰ The initialing of work orders and time records of the shop employees is of a clerical nature, particularly since any dispute regarding time is resolved by Granning. Finally, if the Petitioner is found to be a supervisor, there would be a high ratio of two supervisors for approximately every four shop employees in an operation where job duties are repetitive and routine, and where upper management is present and accessible. *Airkaman, Inc.*, 230 NLRB 924, 926 (1977).

¹⁰ I find no merit in the Union's argument that Granning's substitution for the Petitioner with respect to his lead duties when the Petitioner is absent from the facility automatically conveys supervisory status.

Accordingly, I conclude the Petitioner is not a supervisor within the meaning of Section 2(11) of the Act. Thus, processing of the instant decertification petition is appropriate and Petitioner is eligible to vote in the election herein.

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All service and maintenance employees employed by the Employer at its 3040 Wyoming, Dearborn, Michigan facility;
but excluding all salaried employees, office clerical employees, guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 8th day of October, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
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